

MLG AUTOMOTIVE LAW, APLC

A Professional Law Corporation

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Attorneys for Plaintiff, Leigh Carleu, as Administrator of the Estate of Stephen W. Carleu

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LEIGH CARLEU, as Administrator
of the Estate of STEPHEN W.
CARLEU, deceased,

Plaintiff,

vs.

FCA US LLC, a Delaware limited
liability company; and DOES 1 to 25,
inclusive,

Defendants.

Case No. CV 15-9480 FMO (KKx)

Judge: Fernando M. Olguin

**STIPULATED PROTECTIVE
ORDER**

Complaint Filed: December 8, 2015

First Amended

Complaint Filed: February 15, 2016

1 **1. PURPOSES AND LIMITATIONS**

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court
6 to enter the following Stipulated Protective Order. The parties acknowledge that
7 this Order does not confer blanket protections on all disclosures or responses to
8 discovery and that the protection it affords from public disclosure and use extends
9 only to the limited information or items that are entitled to confidential treatment
10 under the applicable legal principles. The parties further acknowledge, as set forth
11 in Section 13.3, below, that this Stipulated Protective Order does not entitle them
12 to file confidential information under seal. Instead, Civil Local Rule 79-5 sets
13 forth the procedures that must be followed and the standards that will be applied
14 when a party seeks permission from the Court to file material under seal.

15
16 **2. GOOD CAUSE STATEMENT**

17 This action is likely to involve an individual's private personal information,
18 and an entities' trade secrets and other valuable research, development,
19 commercial, financial, technical and/or proprietary information, both of which
20 necessitate special protection from public disclosure and from use for any purpose
21 other than prosecution of this action is warranted. Such confidential and
22 proprietary materials and information consist of, among other things, confidential
23 financial or business information, information regarding confidential business
24 practices, or other confidential research, development, or commercial information
25 (including information implicating privacy rights of third parties), information
26 otherwise generally unavailable to the public, or which may be privileged or
27 otherwise protected from disclosure under state or federal statutes, court rules,
28 case decisions, or common law. Accordingly, to expedite the flow of information,

1 to facilitate the prompt resolution of disputes over confidentiality of discovery
 2 materials, to adequately protect information the parties are entitled to keep
 3 confidential, to ensure that the parties are permitted reasonable necessary uses of
 4 such material in preparation for and in the conduct of trial, to address their
 5 handling at the end of the litigation, and serve the ends of justice, a protective
 6 order for such information is justified in this matter. It is the intent of the parties
 7 that information will not be designated as confidential for tactical reasons and that
 8 nothing be so designated without a good faith belief that it has been maintained in
 9 a confidential, non-public manner, and there is good cause why it should not be
 10 part of the public record of this case.

11 12 **3. DEFINITIONS**

13 3.1 Action: This pending federal law suit.

14 3.2 Challenging Party: A Party or Non-Party that challenges the
 15 designation of information or items under this Order.

16 3.3 “CONFIDENTIAL” Information or Items: Information (regardless
 17 of how it is generated, stored or maintained) or tangible things that qualify for
 18 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
 19 the Good Cause Statement.

20 3.4 Counsel: Outside Counsel of Record and House Counsel (as well as
 21 their support staff).

22 3.5 Designating Party: A Party or Non-Party that designates information
 23 or items that it produces in disclosures or in responses to discovery as
 24 “CONFIDENTIAL.”

25 3.6 Disclosure or Discovery Material: All items or information,
 26 regardless of the medium or manner in which it is generated, stored, or maintained
 27 (including, among other things, testimony, transcripts, and tangible things), that
 28 are produced or generated in disclosures or responses to discovery in this matter.

1 3.7 Expert: A person with specialized knowledge or experience in a
2 matter pertinent to the litigation who has been retained by a Party or its counsel to
3 serve as an expert witness or as a consultant in this Action.

4 3.8 “HIGHLY CONFIDENTIAL” Information or Items: Extremely
5 sensitive “CONFIDENTIAL” information or items whose disclosure to another
6 Party or Non-Party would create a substantial risk of serious injury that could not
7 be avoided by less restrictive means. This definition includes: (1) material which
8 has not been made public and which is protected from disclosure by federal or
9 state constitutional, statutory and common law, including, but not limited to,
10 rights of privacy of the parties to this stipulation and of third parties; and (2) any
11 confidential material that constitutes or refers to trade secrets, other highly
12 sensitive information of a competitive or financial nature, or individual personal
13 information from employee files.

14 3.9 House Counsel: Attorneys who are employees of a party to this
15 Action. House Counsel does not include Outside Counsel of Record or any other
16 outside counsel.

17 3.10 Non-Party: Any natural person, partnership, corporation, association,
18 or other legal entity not named as a Party to this action.

19 3.11 Outside Counsel of Record: Attorneys who are not employees of a
20 Party to this Action but are retained to represent or advise a Party to this Action
21 and have appeared in this Action on behalf of that Party or are affiliated with a
22 law firm which has appeared on behalf of that Party, and includes support staff.

23 3.12 Party: Any party to this Action, including all of its officers,
24 directors, employees, consultants, retained experts, and Outside Counsel of
25 Record (and their support staffs).

26 3.13 Producing Party: A Party or Non-Party that produces Disclosure or
27 Discovery Material in this Action.

1 3.14 Professional Vendors: Persons or entities that provide litigation
 2 support services (*e.g.*, photocopying, videotaping, translating, preparing exhibits
 3 or demonstrations, and organizing, storing, or retrieving data in any form or
 4 medium) and their employees and subcontractors.

5 3.15 Protected Material: Any Disclosure or Discovery Material that is
 6 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”

7 3.16 Receiving Party: A Party that receives Disclosure or Discovery
 8 Material from a Producing Party.

9 10 **4. SCOPE**

11 The protections conferred by this Stipulation and Order cover not only
 12 Protected Material (as defined above), but also (1) any information copied or
 13 extracted from Protected Material; (2) all copies, excerpts, summaries, or
 14 compilations of Protected Material; and (3) any testimony, conversations, or
 15 presentations by Parties or their Counsel that might reveal Protected Material.

16 Any use of Protected Material at trial shall be governed by the orders of the
 17 trial judge. This Order does not govern the use of Protected Material at trial.

18 19 **5. DURATION**

20 Even after final disposition of this litigation, the confidentiality obligations
 21 imposed by this Order shall remain in effect until a Designating Party agrees
 22 otherwise in writing or a court order otherwise directs. Final disposition shall be
 23 deemed to be the later of: (1) dismissal of all claims and defenses in this Action,
 24 with or without prejudice; and (2) final judgment herein after the completion and
 25 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
 26 including the time limits for filing any motions or applications for extension of
 27 time pursuant to applicable law.

1 **6. DESIGNATING PROTECTED MATERIAL**

2 6.1 Exercise of Restraint and Care in Designating Material for
 3 Protection. Each Party or Non-Party that designates information or items for
 4 protection under this Order must take care to limit any such designation to specific
 5 material that qualifies under the appropriate standards. The Designating Party
 6 must designate for protection only those parts of material, documents, items, or
 7 oral or written communications that qualify so that other portions of the material,
 8 documents, items, or communications for which protection is not warranted are
 9 not swept unjustifiably within the ambit of this Order.

10 Mass, indiscriminate, or routinized designations are prohibited.
 11 Designations that are shown to be clearly unjustified or that have been made for
 12 an improper purpose (*e.g.*, to unnecessarily encumber the case development
 13 process or to impose unnecessary expenses and burdens on other parties) may
 14 expose the Designating Party to sanctions.

15 If it comes to a Designating Party's attention that information or items that
 16 it designated for protection do not qualify for protection, that Designating Party
 17 must promptly notify all other Parties that it is withdrawing the inapplicable
 18 designation.

19 6.2 Manner and Timing of Designations. Except as otherwise provided
 20 in this Order (*see, e.g.*, second paragraph of Section 6.2(a) below), or as otherwise
 21 stipulated or ordered, Disclosure or Discovery Material that qualifies for
 22 protection under this Order must be clearly so designated before the material is
 23 disclosed or produced.

24 Designation in conformity with this Order requires:

25 (a) for information in documentary form (*e.g.*, paper or electronic
 26 documents, but excluding transcripts of depositions or other pretrial or trial
 27 proceedings), that the Producing Party affix at a minimum, the legend
 28 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL," to each page that

1 contains protected material. If only a portion or portions of the material on
2 a page qualifies for protection, the Producing Party also must clearly
3 identify the protected portion(s) (*e.g.*, by making appropriate markings in
4 the margins).

5 A Party or Non-Party that makes original documents available for
6 inspection need not designate them for protection until after the inspecting
7 Party has indicated which documents it would like copied and produced.
8 During the inspection and before the designation, all of the material made
9 available for inspection shall be deemed “HIGHLY CONFIDENTIAL.”
10 After the inspecting Party has identified the documents it wants copied and
11 produced, the Producing Party must determine which documents, or
12 portions thereof, qualify for protection under this Order. Then, before
13 producing the specified documents, the Producing Party must affix the
14 appropriate legend (either “CONFIDENTIAL” or “HIGHLY
15 CONFIDENTIAL”) to each page that contains Protected Material. If only a
16 portion or portions of the material on a page qualifies for protection, the
17 Producing Party also must clearly identify the protected portion(s) (*e.g.*, by
18 making appropriate markings in the margins).

19 (b) for testimony given in depositions, that the Designating Party
20 identify the Disclosure or Discovery Material on the record, before the
21 close of the deposition, and further specify any portions that qualify as
22 “HIGHLY CONFIDENTIAL.”

23 (c) for information produced in some form other than documentary
24 and for any other tangible items, that the Producing Party affix in a
25 prominent place on the exterior of the container or containers in which the
26 information is stored the legend “CONFIDENTIAL” or “HIGHLY
27 CONFIDENTIAL.” If only a portion or portions of the information
28

1 warrants protection, the Producing Party, to the extent practicable, shall
2 identify the protected portion(s).

3 6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
4 failure to designate qualified information or items does not, standing alone, waive
5 the Designating Party's right to secure protection under this Order for such
6 material. Upon timely correction of a designation, the Receiving Party must make
7 reasonable efforts to assure that the material is treated in accordance with the
8 provisions of this Order.

9
10 **7. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

11 7.1 Timing of Challenges. Any Party or Non-Party may challenge a
12 designation of confidentiality at any time that is consistent with the Court's
13 Scheduling Order.

14 7.2 Meet and Confer. The Challenging Party shall initiate the dispute
15 resolution process under Local Rule 37.1, *et seq.*

16 7.3 The burden of persuasion in any such challenge proceeding shall be
17 on the Designating Party. Frivolous challenges, and those made for an improper
18 purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other
19 parties) may expose the Challenging Party to sanctions. Unless the Designating
20 Party has waived or withdrawn the confidentiality designation, all parties shall
21 continue to afford the material in question the level of protection to which it is
22 entitled under the Producing Party's designation until the Court rules on the
23 challenge.

24
25 **8. ACCESS TO AND USE OF PROTECTED MATERIAL**

26 8.1 Basic Principles. A Receiving Party may use Protected Material that
27 is disclosed or produced by another Party or by a Non-Party in connection with
28 this Action only for prosecuting, defending, or attempting to settle this Action.

1 Such Protected Material may be disclosed only to the categories of persons and
2 under the conditions described in this Order. When the Action has been
3 terminated, a Receiving Party must comply with the provisions of Section 14
4 below (FINAL DISPOSITION).

5 Protected Material must be stored and maintained by a Receiving Party at a
6 location and in a secure manner that ensures that access is limited to the persons
7 authorized under this Order.

8 8.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
9 otherwise ordered by the Court or permitted in writing by the Designating Party, a
10 Receiving Party may disclose any information or item designated
11 “CONFIDENTIAL” only to:

12 (a) the Receiving Party’s Outside Counsel of Record in this Action,
13 as well as employees of said Outside Counsel of Record to whom it is
14 reasonably necessary to disclose the information for this Action;

15 (b) the officers, directors, and employees (including House Counsel)
16 of the Receiving Party to whom disclosure is reasonably necessary for this
17 Action;

18 (c) Experts (as defined in this Order) of the Receiving Party to
19 whom disclosure is reasonably necessary for this Action and who have
20 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

21 (d) the court and its personnel;

22 (e) court reporters and their staff;

23 (f) professional jury or trial consultants, mock jurors, and
24 Professional Vendors to whom disclosure is reasonably necessary for this
25 Action and who have signed the “Acknowledgment and Agreement to Be
26 Bound” (Exhibit A);
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1 (g) the author or recipient of a document containing the information
2 or a custodian or other person who otherwise possessed or knew the
3 information; and

4 (h) any mediator or settlement officer, and their supporting
5 personnel, mutually agreed upon by any of the parties engaged in settlement
6 discussions.

7 8.3 Disclosure of “HIGHLY CONFIDENTIAL” Information or Items:

8 Unless otherwise ordered by the Court or permitted in writing by the Designating
9 Party, a Receiving Party may disclose any information or item designated
10 “HIGHLY CONFIDENTIAL” only to:

11 (a) the Receiving Party’s Outside Counsel of record in this action,
12 as well as employees of said Counsel to whom it is reasonably necessary to
13 disclose the information for this Action;

14 (b) the Receiving Party’s House Counsel;

15 (c) Experts (as defined in this Order): (1) to whom disclosure is
16 reasonably necessary for this litigation; and (2) who have signed the
17 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18 (d) the Court and its personnel, including Court court reporters and their staff;

19 (e) court reporters, their staffs, and professional vendors to whom
20 disclosure is reasonably necessary for this litigation and who have signed
21 the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

22 (f) the author of the document or the original source of the
23 information.

1 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
 2 **PRODUCED IN OTHER LITIGATION**

3 If a Party is served with a subpoena or a court order issued in other
 4 litigation that compels disclosure of any information or items designated in this
 5 Action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” that Party must:

6 (a) promptly notify in writing the Designating Party. Such
 7 notification shall include a copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or
 9 order to issue in the other litigation that some or all of the material covered
 10 by the subpoena or order is subject to this Protective Order. Such
 11 notification shall include a copy of this Stipulated Protective Order; and

12 (c) cooperate with respect to all reasonable procedures sought to be
 13 pursued by the Designating Party whose Protected Material may be
 14 affected.

15 If the Designating Party timely seeks a protective order, the Party served
 16 with the subpoena or court order shall not produce any information designated in
 17 this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” before a
 18 determination by the court from which the subpoena or order issued, unless the
 19 Party has obtained the Designating Party’s permission. The Designating Party
 20 shall bear the burden and expense of seeking protection in that court of its
 21 confidential material and nothing in these provisions should be construed as
 22 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
 23 directive from another court.

24 **10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
 25 **PRODUCED IN THIS LITIGATION**

26 The terms of this Order are applicable to information produced by a Non-
 27 Party in this Action and designated as “CONFIDENTIAL” or “HIGHLY
 28 CONFIDENTIAL.” Such information produced by Non-Parties in connection

with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(a) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(b) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(c) make the information requested available for inspection by the Non-Party, if requested.

If the Non-Party fails to seek a protective order from this Court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the Court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately: (a)

1 notify in writing the Designating Party of the unauthorized disclosures; (b) use its
 2 best efforts to retrieve all unauthorized copies of the Protected Material; (c)
 3 inform the person or persons to whom unauthorized disclosures were made of all
 4 the terms of this Order; and (d) request such person or persons to execute the
 5 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
 6 A.

7
 8 **12. INADVERTENT PRODUCTION OF PRIVILEGED OR**
 9 **OTHERWISE PROTECTED MATERIAL**

10 When a Producing Party gives notice to Receiving Parties that certain
 11 inadvertently produced material is subject to a claim of privilege or other
 12 protection, the obligations of the Receiving Parties are those set forth in Federal
 13 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
 14 whatever procedure may be established in an e-discovery order that provides for
 15 production without prior privilege review.

16 **13. MISCELLANEOUS**

17 13.1 Right to Further Relief. Nothing in this Order abridges the right of
 18 any person to seek its modification by the Court in the future.

19 13.2 Right to Assert Other Objections. By stipulating to the entry of this
 20 Protective Order, no Party waives any right it otherwise would have to object to
 21 disclosing or producing any information or item on any ground not addressed in
 22 this Stipulated Protective Order. Similarly, no Party waives any right to object on
 23 any ground to use in evidence of any of the material covered by this Protective
 24 Order.

25 13.3 Filing Protected Material. A Party that seeks to file under seal any
 26 Protected Material must comply with Civil Local Rule 79-5. Protected Material
 27 may only be filed under seal pursuant to a court order authorizing the sealing of
 28 the specific Protected Material at issue. If a Party’s request to file Protected

1 Material under seal is denied by the Court, then the Receiving Party may file the
2 information in the public record unless otherwise instructed by the Court.

3
4 **14. FINAL DISPOSITION**

5 After the final disposition of this Action, as defined in Section 5
6 (DURATION), within 60 days of a written request by the Designating Party, each
7 Receiving Party must return all Protected Material to the Producing Party or
8 destroy such material. As used in this subdivision, "all Protected Material"
9 includes all copies, abstracts, compilations, summaries, and any other format
10 reproducing or capturing any of the Protected Material. Whether the Protected
11 Material is returned or destroyed, the Receiving Party must submit a written
12 certification to the Producing Party (and, if not the same person or entity, to the
13 Designating Party) by the 60 day deadline that (1) identifies (by category, where
14 appropriate) all the Protected Material that was returned or destroyed and (2)
15 affirms that the Receiving Party has not retained any copies, abstracts,
16 compilations, summaries or any other format reproducing or capturing any of the
17 Protected Material. Notwithstanding this provision, Counsel are entitled to retain
18 an archival copy of all pleadings, motion papers, trial, deposition, and hearing
19 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
20 reports, attorney work product, and consultant and expert work product, even if
21 such materials contain Protected Material. Any such archival copies that contain
22 or constitute Protected Material remain subject to this Protective Order as set forth
23 in Section 5 (DURATION).

24
25 **15. VIOLATION OF THIS ORDER**

26 Any violation of this Order may be punished by any and all appropriate
27 measures including, without limitation, contempt proceedings and/or monetary
28 sanctions.

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2 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**
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6 **MLG AUTOMOTIVE LAW, APLC**
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8 Dated: May 2, 2016 By: /s/ Kathryn J. Harvey
9 Jonathan A. Michaels, Esq.
10 Kathryn J. Harvey, Esq.
11 Attorneys for Plaintiff

12 **SEDGWICK LLP**
13

14 Dated: May 2, 2016 By: /s/ Ryan E. Cosgrove
15 Philip R. Cosgrove, Esq.
16 Ryan E. Cosgrove, Esq.
17 Attorneys for Defendant FCA US LLC
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19 **ATTESTATION REGARDING SIGNATURES**

20 I, Kathryn J. Harvey, attest that I have obtained the concurrence of Ryan E.
21 Cosgrove Esq., counsel for Defendant FCA US LLC, in the filing of this
22 document.

23 **MLG AUTOMOTIVE LAW, APLC**
24

25 Dated: May 2, 2016 By: /s/Kathryn J. Harvey
26 Kathryn J. Harvey, Esq.
27 Attorney for Plaintiffs
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2 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

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4 Dated: May 3, 2016



5 HON. KENLY KIYA KATO
6 United States Magistrate Judge
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EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury
 that I have read in its entirety and understand the Stipulated Protective Order that
 was issued by the United States District Court for the Central District of
 California on [date] in the case of *Carleu v. FCA US LLC*, Case No. 2:15-cv-
 09480-FMO (KKx). I agree to comply with and to be bound by all the terms of
 this Stipulated Protective Order and I understand and acknowledge that failure to
 so comply could expose me to sanctions and punishment in the nature of
 contempt. I solemnly promise that I will not disclose in any manner any
 information or item that is subject to this Stipulated Protective Order to any
 person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
 Court for the Central District of California for the purpose of enforcing the terms
 of this Stipulated Protective Order, even if such enforcement proceedings occur
 after termination of this Action. I hereby appoint _____
 [print or type full name] of _____ [print
 or type full address and telephone number] as my California agent for service of
 process in connection with this action or any proceedings related to enforcement
 of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____